

STATE OF MICHIGAN
COURT OF APPEALS

CLAY TOWNSHIP,

Plaintiff/Counter-Defendant-
Appellee,

v

EDWARD HOTCHKISS and JUDY
HOTCHKISS,

Defendants/Counter-
Plaintiffs/Third-party Plaintiffs-
Appellants,

and

SIDNEY BROWN and MICHAEL J. KRAS,

Third-Party Defendants-Appellees.

UNPUBLISHED

July 3, 2003

No. 236688

St. Clair Circuit Court

LC No. 00-000733-CZ

Before: Cavanagh, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Defendants appeal as of right an order granting plaintiff township's petition for injunctive relief to enforce its zoning ordinance and awarding costs. We affirm.

Defendants reside on Harsens Island. After defendants failed to properly apply for a building permit for construction on their house, the township filed suit to force defendants' compliance with the township's zoning ordinance. Defendants filed a counterclaim for a writ of mandamus to compel the township to issue the building permit. Defendants also moved to dismiss the case for lack of jurisdiction, claiming that Harsens Island is not part of the township or the state of Michigan, but instead is in international waters. The trial court denied the motion, and after a bench trial, granted the township's petition to force compliance with the ordinance.

Defendants first argue on appeal that the United States has no jurisdiction over Harsens Island.¹ We disagree. We review de novo questions of jurisdiction. *Jackson Comm College v Dep't of Treasury*, 241 Mich App 673, 678; 621 NW2d 707 (2000).

Pursuant to US Const, art VI, the United States has jurisdiction over all subjects within the country. Harsens Island is part of the United States pursuant to the Definitive Treaty of Peace, September 3, 1783, US-GB, art 2, 8 Stat 80-83, the Treaty of Peace and Amity, December 24, 1814, US-GB, 126 TS 3-4 (Treaty of Ghent), and the Declaration of the Commissioners under Article 6 of the Treaty of Ghent, June 18, 1822, US-GB, 8 Stat 274-277.

Defendants next argue that because the Chippewa First Nations of Upper Canada did not convey Harsens Island to the state of Michigan, the state has no basis to exercise authority over the island. We disagree.

The state of Michigan need not own title to property to enforce regulations if the property is located within its geographical borders. An owner's right to unrestricted use of his property is subject to reasonable state regulations pursuant to the legitimate exercise of police power. *People v McKendrick*, 188 Mich App 128, 137; 468 NW2d 903 (1991).

Defendants next claim that the township has no authority to enforce its ordinance and Michigan courts have no jurisdiction over them because they are not part of the state. We disagree.

Subject matter jurisdiction is defined as the court's ability to exercise power over a certain type of case. *Campbell v St John Hosp*, 434 Mich 608, 613; 455 NW2d 695 (1990). Subject matter jurisdiction over all civil claims rests in the circuit court unless our Constitution or statutes provide otherwise. MCL 600.605. Because the Township Zoning Act (TZA), MCL 125.271 *et seq.*, does not preclude subject matter jurisdiction, the trial court had subject matter jurisdiction in the case at hand.

The court must also have personal jurisdiction before it may exercise power over a defendant or an item of property. MCR 2.116(C)(1). In personam jurisdiction is the court's power to hear an action against a particular defendant. A state has general in personam jurisdiction over defendants domiciled within the state. *Milliken v Meyer*, 311 US 457, 463-464; 61 S Ct 339; 85 L Ed 278 (1940). MCL 600.701 gives courts personal jurisdiction over a defendant if the defendant was in the state or was domiciled in the state when served with process. While there is no proof of service of the complaint in this case, MCR 2.116(D)(1) provides that a claim of insufficient process must be raised in the first responsive pleading or it is deemed waived. Because defendants did not raise insufficient service of process in their first responsive pleading, they waived this claim.

We also conclude that the trial court had in rem jurisdiction. In rem jurisdiction is the court's power to hear a case regarding an item of property located within the geographic borders

¹ We note that defendants' brief is extremely confusing and at times incomprehensible, which has made it difficult for this Court to properly ascertain each of defendants' issues and arguments.

of the state. MCL 600.755. Harsens Island is within Michigan's boundaries and is part of the state of Michigan pursuant to 5 Stat 49 (1836). The state may regulate the use of private property for the health, safety, morals, and welfare of the public. *Bowermand v Sheehan*, 242 Mich 95, 99-100; 219 NW 69 (1928). Michigan has delegated this authority to its sub-units of government. The TZA, gives a township the authority to regulate land uses within the township through a zoning ordinance.

Pursuant to 1820 Ter Laws, Vol II, p 800, which established St. Clair County, Harsens Island is part of the county. In addition, Clay Township was established pursuant to 1828 Ter Laws, Vol II, p 651, and the township territory included Harsens Island. Thus, the township had valid authority to enforce its ordinance because a zoning ordinance is presumed reasonable and valid, *Korby v Redford Twp*, 348 Mich 193, 196; 82 NW2d 441 (1957), and defendants provided no evidence indicating otherwise.

Defendants next argue that the trial court had no subject matter jurisdiction over this case because maritime jurisdiction applies. Again, we disagree.

While the federal courts have authority to adjudicate cases regarding maritime jurisdiction pursuant to US Const, art III, §2, and exclusive jurisdiction over civil cases involving maritime jurisdiction pursuant to 28 USC 1333, there must be a nexus between the activity and maritime jurisdiction. Under maritime jurisdiction, the federal government retains authority regarding matters and issues relevant to navigation. See *People v Massey*, 137 Mich App 480, 485; 358 NW2d 615 (1984). The nature of the wrong must be so directly related to commerce or navigation that it excludes local law in making compensation for injury. *Allisot v Fed Shipbuilding & Drydock Co*, 4 NJ 445, 453; 73 A2d 153 (1950). The instant case involves enforcement of a zoning ordinance, which is not a traditional maritime activity, and does not involve commerce or navigation. Because the federal government defers to the states in matters involving the states' police power where state laws are not preempted, *Massey, supra* at 486, maritime law does not apply.

Defendants also raise several collateral arguments. Because these issues were not properly raised in the trial court, and defendants fail to provide any evidence to support them, we decline to address them now. *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Hilda R. Gage
/s/ Brian K. Zahra